

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Keyne Jean Villert	Team: Squad #14	CCRB Case #: 201505101	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/11/2015 8:40 PM	Location of Incident: Inside § 87(2)(b)	Precinct: 121	18 Mo. SOL 12/11/2016	EO SOL 12/11/2016	
Date/Time CV Reported Mon, 06/15/2015 1:27 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/23/2015 11:01 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT2 Robert Myers	02934	916305	001 DET
2. DT3 Frank Francisco	02987	928312	001 DET

Officer(s)	Allegation	Investigator Recommendation
A.DT2 Robert Myers	Abuse: Det. Robert Myers threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
B.DT3 Frank Francisco	Abuse: Det. Frank Francisco entered § 87(2)(b), in Staten Island.	§ 87(2)(b)
C.DT2 Robert Myers	Abuse: Det. Robert Myers entered § 87(2)(b), in Staten Island.	§ 87(2)(b)
D.DT2 Robert Myers	Force: Det. Robert Myers restricted the breathing of § 87(2)(b).	§ 87(2)(b)

Case Summary

On June 11, 2015, at approximately 8:40 p.m., § 87(2)(b) was inside her apartment, located at § 87(2)(b) in Staten Island, when she heard knocks on her front door. § 87(2)(b) approached the door and allegedly heard an officer, identified via investigation as Det. Robert Myers from the 1st Precinct Detective Squad, instruct her to open the door and threaten to forcibly open it if she refused (**Allegation A**). The officers were not in possession of an active warrant for § 87(2)(b). § 87(2)(b) opened the door and was informed by Det. Myers and his partner, Det. Frank Francisco, also from the 1st Precinct Detective Squad, that she was to be arrested for § 87(2)(b). § 87(2)(b) refused to be arrested by the officers, at which point Det. Francisco allegedly placed his foot inside the doorway of the apartment, thus keeping her from completely closing the door. Det. Myers then allegedly pushed the door open, entered the apartment, grabbed § 87(2)(b) and pushed her onto a nearby couch, where the officers placed her in handcuffs (**Allegations B and C**). On the couch, Det. Myers allegedly placed his knee against § 87(2)(b)'s back, restricting her breathing (**Allegation D**). The officers eventually handcuffed § 87(2)(b) escorted her out of the building, and transported her to the 1st Precinct stationhouse.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because § 87(2)(b) was arrested as a result of this incident.
- On July 17, 2015, the undersigned investigator submitted a notice of claim inquiry to the New York City Office of the Comptroller. To date, no response has been received and any such response will be added to the case file upon its receipt.

§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (See Board Review 04).
- There are no prior substantiated CCRB allegations against Det. Myers or Det. Francisco. Two entry and search of a premise allegations have previously been pled against Det. Myers and were closed as unsubstantiated and complainant uncooperative. § 87(2)(g)

Potential Issue

- Det. Myers retired on July 1, 2015, before the CCRB had the opportunity to interview him about the incident. (See Board Review 01).

Findings and Recommendations

Allegations Not Pled

§ 87(2)(g)

§ 87(2)(g)

Allegation A – Abuse of Authority: Det. Robert Myers threatened to damage § 87(2)(b)

§ 87(2)(b) s property.

Allegation C – Abuse of Authority: Det. Robert Myers entered § 87(2)(b)

, in Staten Island.

Allegation D – Force: Det. Robert Myers restricted the breathing of § 87(2)(b)

§ 87(2)(b) alleged that Det. Myers threatened to damage her apartment door, improperly entered her apartment, and restricted her breathing by pressing his knee into her back. § 87(2)(b)

(g)

Det. Myers retired from the NYPD on July 1, 2015.

§ 87(2)(g)

Allegation B – Abuse of Authority: Det. Frank Francisco entered § 87(2)(b)

in Staten Island.

It is undisputed that the officers knocked on § 87(2)(b) s door, that she eventually opened the door, that the officers entered her apartment, and that they handcuffed and arrested her there following a struggle. The NYPD’s Monitoring and Analysis Section confirmed there were no active warrants for § 87(2)(b) on the date of the incident. (See Board Review 1)

According to § 87(2)(b) she observed Det. Myers and Det. Francisco behind her door and recognized Det. Myers from a prior arrest. She alleged that Det. Myers ordered her to open the door and threatened that otherwise the officers would do so themselves. § 87(2)(b) first alleged that Det. Myers threatened to break the door open, but she later said that he stated something to the effect of, “Open the door, if not we’ll open it.” § 87(2)(b) added that after she opened the door, the officers were outside her apartment when Det. Francisco placed his foot door in the doorway, thus keeping her from completely closing the door. § 87(2)(b) explained that she walked away from the door, Det. Myers pushed it open and the officers entered the apartment. (See Board Review 03)

Det. Myers was not interviewed because he retired. Det. Francisco did not recall any conversation taking place prior to § 87(2)(b) opening the door, noting that § 87(2)(b) opened the door soon after the officers knocked on it. Det. Francisco said Det. Myers was the officer who first spoke with § 87(2)(b) but when asked whether Det. Myers threatened to open the door himself, Det. Francisco said, “I don’t recall nothing a conversation like that.” Det. Francisco did not recall placing his foot in the doorway. Det. Francisco claimed that the officers entered the first time only after obtaining consent. He also claimed that Det. Myers stayed inside the apartment while he went downstairs, and that Det. Myers was still inside the apartment struggling to arrest § 87(2)(b) when he returned.

§ 87(2)(g)

§ 87(2)(g) Det.

Francisco testified that Det. Myers stayed in the apartment the whole time, thus justifying Det. Francisco’s decision to reenter to assist Det. Myers. § 87(2)(g) § 87(2)(b) recalled that when he arrived midway through the incident, both officers were outside the apartment. He explained that after his arrival, he saw § 87(2)(b) back away from the door, twice retreating further into her apartment, at which point the officers made their entry and arrested her. (See

Board Review 02) § 87(2)(g)

§ 87(2)(g)

It has been long determined that officers are allowed to conduct a warrantless entry into a premise, provided that there is probable cause, only if exigent circumstances exist or consent is given. See People v. Payton, 445 U.S. 573 (1980) and People v. McBride, 14 N.Y.3d 440 (2010). (See Board Review 08)

Additionally, the court held in People v. Gonzalez, 39 N.Y.2d 122 (1976) that consent is “voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice,” and that “voluntariness is incompatible with official coercion, actual or implicit, over or subtle.” (See Board Review 07)

Moreover, People v. Ashcroft, 33 N.Y.3d 429 (2006), held that officers were warranted in reaching in and pulling out a defendant, who voluntarily opened his door and then stood in close proximity of his doorway, from a residence because he knowingly and voluntarily presented himself for public view. (See Board Review 06)

Lastly, the courts have also determined that officers are allowed to secure, or “freeze,” a premise while awaiting the procurement of a search warrant to preserve the status quo of said premise, thus preventing the escape of a perpetrator. See People v. Segura, 468 U.S. 796 (1984) and People v. Arnau, 58 N.Y.2d 27, (1982). (See Board Review 05)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad: 14

Investigator: _____ Keyne Jean Villert _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date